

**ST. JOSEPH HEALTH SYSTEM CLINICAL VIEWER
TERMS OF USE**

PLEASE READ THESE TERMS OF USE (THE “TERMS OF USE”) CAREFULLY. AUTHORIZED USERS MUST SIGNIFY CONSENT BEFORE USING OR ACCESSING THE ST. JOSEPH HEALTH SYSTEM CLINICAL VIEWER.

ST. JOSEPH HEALTH SYSTEM (“SJHS”) PROVIDES ACCESS TO THE CLINICAL VIEWER SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THESE TERMS OF USE AND ON THE CONDITION THAT EACH AUTHORIZED USER ACCEPTS AND COMPLIES WITH THEM. BY CONTINUING TO ACCESS THE CLINICAL VIEWER YOU, AS AN AUTHORIZED USER, (A) ACCEPT THESE TERMS OF USE AND AGREE THAT YOU ARE LEGALLY BOUND BY THEIR TERMS; AND (B) REPRESENT AND WARRANT THAT YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT.

SECTION 1. ACCESS TO THE CLINICAL VIEWER

1.1 Grant of Access. SJHS grants to Authorized User a limited, non-exclusive, non-transferable, personal, revocable license to access and use the Clinical Viewer for the purpose of accessing clinical records of patients until the Authorized User’s access to the Clinical Viewer is terminated in accordance with the terms of these Terms of Use. These Terms of Use do not permit access to the Clinical Viewer by persons who are not Authorized Users.

1.2 Ownership. Access to the Clinical Viewer is licensed and not sold. Authorized User shall not, by virtue of these Terms of Use or otherwise, acquire any rights whatsoever in the Clinical Viewer aside from the limited licenses granted herein, and Authorized User hereby expressly disclaims any other rights therein. As between SJHS and Authorized User, SJHS shall have and retain all right, title and interest in and to the Clinical Viewer and all SJHS Intellectual Property (defined below) comprising the Clinical Viewer, as well as any modifications or enhancements made thereto. Authorized User hereby irrevocably assigns to SJHS ownership of any and all suggestions, modifications, enhancements, improvements, alterations, changes or revisions to the Clinical Viewer (collectively, “**Modifications**”) made or suggested by Authorized User. Authorized User will cooperate with SJHS, take any and all necessary actions, and provide any necessary documentation requested by SJHS to confirm such assignments and SJHS’ ownership of the Modifications.

1.3 Prohibitions. Authorized User may not copy, use, modify, display, rent, resell, sublicense or distribute the Clinical Viewer or access thereto without SJHS’ prior written approval. No identifying marks, SJHS Intellectual Property or other proprietary right notices of SJHS or other parties may be deleted from, altered or obscured on the Clinical Viewer or materials produced by or using the Clinical Viewer. Authorized User may not translate, decompile, disassemble, reverse compile, reverse engineer, decrypt or otherwise seek to recreate the source code of the Clinical Viewer, adapt the Clinical Viewer in any way or use it to create a derivative work, or grant any other person or entity the right or access to do so, without the prior written approval of SJHS. SJHS is not responsible for providing any updates, enhancements, modifications, revisions, additions, replacements or conversions to the Clinical Viewer, or for otherwise maintaining the Clinical Viewer, except as otherwise expressly set forth in these Terms of Use.

1.4 Reserved Rights. All rights not specifically granted to Authorized User hereunder are reserved by SJHS. Nothing herein shall prevent SJHS or its licensors from promoting, selling, providing, licensing or sublicensing access to the Clinical Viewer to other parties in its sole discretion.

SECTION 2. OBLIGATIONS AS A DATA RECIPIENT

2.1 Permissible Use of the Clinical Viewer. Authorized User may only use the Clinical Viewer in accordance with these Terms of Use and any policies and procedures otherwise made available to Authorized User. Authorized User may use the Clinical Viewer only to request or seek access to patient information that the Authorized User is permitted to request pursuant to applicable laws and regulations and any relevant policies and procedures provided to Authorized User. Authorized User may not use the Clinical Viewer to respond to subpoenas or other judicial or administrative requests or demands. Authorized User may not use the Clinical Viewer to access information for his or her own commercial or marketing purposes, or for the commercial or marketing activities of a third party. All patient information accessed through the Clinical Viewer is strictly confidential and is subject to the protections of the Health Insurance Portability and Accountability Act of 1996, and the implementation regulations thereunder, as may be amended from time to time, as well as other applicable federal and state laws related to the confidentiality of patient health information.

2.2 Password Security and Management. Authorized User will be assigned a unique username and password. Authorized User shall be responsible for the security and confidentiality of the username and password assigned to the Authorized User to access the Clinical Viewer, and Authorized User shall not disclose to any other person his or her password. Authorized User acknowledges that he or she is the only individual authorized to use his or her username and password, and Authorized User shall be held responsible for any access to the Clinical Viewer using his or her username and password and any and all actions thereunder. Authorized User shall not attempt to learn or utilize the username or password of any other user. Authorized User is required to comply with all SJHS policies and procedures related to password management. Authorized User agrees to use his or her best efforts to ensure that all access to the Clinical Viewer and any other information and materials produced or disclosed in connection therewith are protected against unauthorized use, dissemination or disclosure. SJHS reserves the right to revoke an Authorized User’s username and password at any time.

2.3 Monitoring Use of the Clinical Viewer. SJHS will conduct and maintain an audit trail of all accesses to the Clinical Viewer and to patient information accessed through the Clinical Viewer. Such monitoring may include, but is not limited to, recording the machine name, internet protocol (IP) address number, user number, date, and content of all accesses to the Clinical Viewer and information accessed thereon that Authorized User may make.

2.4 Acknowledgement of Clinical Responsibilities. Authorized User is solely responsible for any medical or clinical decisions made, advice or treatment rendered, or other actions taken based on information obtained using the Clinical Viewer. Authorized User acknowledges and understands that any and all information obtained through the Clinical Viewer is not to be used as a substitute for his or her own medical judgment. Authorized User is solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management of patients resulting or in any way related to the use of any information obtained through the Clinical Viewer.

2.5 Patient Data. All patient data accessed through the Clinical Viewer is beyond the control of SJHS. SJHS neither originates nor creates all of the patient information nor is it obligated to monitor the specific content or accuracy of the patient information. SJHS shall have no responsibility for or liability related to the accuracy, content, currentness, completeness, or delivery of the patient information. All patient information accessed through the Clinical Viewer is subject to change arising from numerous factors, including without limitation, changes to patient health information made at the request of the patient, changes in patient health condition, the passage of time, and other factors.

SECTION 3. GENERAL OBLIGATIONS OF THE PARTIES

3.1 Technology and Systems. Authorized User shall have the responsibility for acquiring, installing and maintaining its own technology environment and equipment necessary to properly access, operate and utilize the Clinical Viewer, including, without limitation: servers, Internet access, LANs and WANs; for any communications or other costs incurred in operating, accessing and using the Clinical Viewer, and for any other expenses relating to the foregoing. Any necessary equipment and connections shall conform to SJHS' then-current specifications for the Clinical Viewer. Authorized User shall be responsible for ensuring that all computers connecting to the Clinical Viewer are properly configured, including but not limited to the operating system, web browser, and internet connectivity.

3.2 Regulatory Compliance. Authorized User assumes sole and complete responsibility for ensuring that his or her use of the Clinical Viewer is in compliance with all applicable federal, state and local laws and regulations, including, without limitation: (a) federal and state laws and regulations relating to the confidentiality and security of patient health information, including but not limited to, drug and substance abuse information, other behavioral health information, and HIV/AIDS-related information; and (b) state laws and regulations requiring licensure, authorization or other permits to provide or arrange for the provision of services involving information accessed through the Clinical Viewer.

3.3 Access; Availability. SJHS will use commercially reasonable efforts to make the core functions and features of the Clinical Viewer available to Authorized User during normal business hours (8:00am – 6:00pm PST Monday through Friday excluding holidays). Authorized User understands and agrees that, from time to time, the Clinical Viewer and/or certain features or functionalities of the Clinical Viewer may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment or Clinical Viewer malfunctions; (ii) periodic maintenance procedures or repairs which SJHS may undertake from time to time; or (iii) causes beyond the control of SJHS or which are not foreseeable by SJHS.

SECTION 4. RESPONSIBILITY FOR USE

4.1 Acceptable Use. Authorized User assumes sole and complete responsibility for ensuring that no unauthorized use of the Clinical Viewer occurs through its credentials or system. Unauthorized use includes, without limitation: (a) use of the Clinical Viewer to access non-Clinical Viewer resources; (b) attempts to gain access to data about individuals other than for permissible purposes; (c) alteration or modification of individual data or of any Clinical Viewer configuration values from the originally delivered values; (d) accessing the Clinical Viewer through any technology or means other than through the user account information provided to Authorized User by SJHS or the method specified by SJHS; or (e) any use of the Clinical Viewer or the information contained therein in violation of any applicable law or regulation. Authorized User must not use the Clinical Viewer in a way that disrupts use of the Clinical Viewer by others; Authorized User must not use any information obtained through the Clinical Viewer except for the purpose for which the information was provided, and Authorized User must not attempt to use the Clinical Viewer to gain unauthorized access to information.

4.2 Suitability. Authorized User shall be responsible for determining the suitability of the Clinical Viewer for its operations and whether the Clinical Viewer will achieve the results it desires. As with manually kept records, records transmitted using the Clinical Viewer may contain errors, whether resulting from incorrect input or recording of information, errors, or other causes. Authorized User is responsible for understanding the limitations of the Clinical Viewer.

4.3 Authorized User Representations. Authorized User represents, warrants and covenants that it will not decompile, reverse engineer, disassemble or unlawfully use or reproduce any of the Clinical Viewer or other copyrighted or trademarked material, trade secrets or other proprietary information related to or accessible through the Clinical Viewer.

SECTION 5. LIMITED WARRANTY, DISCLAIMER, LIMITATION OF LIABILITY & INDEMNIFICATION

5.1 Limited Warranty. SJHS warrants that the components of the Clinical Viewer are either owned by SJHS or used under license if owned by third parties, and that, to the best of SJHS' knowledge, Authorized User's access and use of the Clinical Viewer, as contemplated by these Terms of Use, without modification and in accordance with the documentation, will not infringe the rights of any third party.

5.2 Disclaimer. THE WARRANTIES SET FORTH IN SECTION 5.1 ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY SJHS. TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, SJHS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SUITABILITY, INTEGRATION, CURRENTNESS, ACCURACY, AND FITNESS FOR A PARTICULAR PURPOSE. SJHS DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE CLINICAL VIEWER WILL MEET AUTHORIZED USER'S REQUIREMENTS, THAT ACCESS TO OR OPERATION OR USE OF THE CLINICAL VIEWER WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS IN THE CLINICAL VIEWER, IF ANY, WILL BE CORRECTED, OR THAT RESULTS WILL BE TIMELY, ACCURATE, ADEQUATE OR COMPLETE. SJHS DOES NOT WARRANT OR REPRESENT THAT USE OF THE CLINICAL VIEWER WILL RESULT IN COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, AND AUTHORIZED USER UNDERSTANDS THAT HE OR SHE IS SOLELY RESPONSIBLE FOR ENSURING COMPLIANCE WITH ANY AND ALL APPLICABLE LAWS AND REGULATIONS.

5.3 Limitation of Liability. SJHS SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THESE TERMS OF USE OR OTHERWISE FOR LOST PROFITS, LOSS OF DATA, WORK STOPPAGE, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, THE AGGREGATE LIABILITY OF SJHS FOR ANY REASON AND UPON ANY CAUSE OF ACTION OR CLAIM SHALL BE LIMITED TO \$100. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE PARTIES UNDERSTAND THAT THE FOREGOING DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY ARE MATERIAL TERMS OF THESE TERMS OF USE AND A REFLECTION OF THE RISKS ASSUMED BY THE PARTIES IN ORDER FOR SJHS TO PROVIDE AUTHORIZED USER WITH ACCESS TO THE CLINICAL VIEWER.

5.4 Indemnification by Authorized User. Authorized User will, at its own expense, indemnify and hold SJHS and its shareholders, members, directors, officers, employees and agents harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs and expenses (including reasonable attorneys' fees) to the extent that the foregoing result from or pertain to Authorized User's use, misuse and operation of the Clinical Viewer, breach of these Terms of Use, gross negligence, or willful misconduct.

SECTION 6. CONFIDENTIALITY

6.1 Confidential Information. Either party (the "Disclosing Party") may from time to time disclose to the other party (the "Recipient") Confidential Information (as defined below). As used herein, "Confidential Information" means: (a) any nonpublic information regarding the Disclosing Party's existing or proposed business, technology, products, services, internal structure and strategies, specifically including, without limitation, the Clinical Viewer, documentation, end-user materials, Intellectual Property, proposals, designs, concepts, methodologies, inventions, source or object code, developments, databases, referral sources, or licensing and access policies; (b) any nonpublic information about Disclosing Party's financial condition; (c) any information of the Disclosing Party marked "Confidential"; (d) any information disclosed orally by the Disclosing Party, if the Disclosing Party states at the time of first disclosure that such information is of a confidential nature and the Disclosing Party confirms the confidentiality of such information with the Recipient in writing within ten (10) days after first disclosure; and (e) all such information that, by its nature, a reasonable person would consider to be confidential or proprietary. Without limiting the generality of the foregoing, all information pertaining to Authorized User provided to SJHS related to the Clinical Viewer shall be deemed to be Confidential Information. Confidential Information shall not include information that: (i) is or becomes publicly available through no fault of Recipient; (ii) is or has been received in good faith by Recipient without restriction on use or disclosure from a third party having no obligation of confidentiality to Disclosing Party; or (iii) is or has been independently developed by Recipient without reference to Confidential Information received from Disclosing Party, as evidenced by Recipient's written records. Patient information shall not be considered Confidential Information, but shall be subject to the confidentiality protections otherwise set forth in these Terms of Use.

6.2 Confidentiality and Non-Use. Recipient will use reasonable efforts to avoid unauthorized disclosure of the Disclosing Party's Confidential Information. Recipient will protect the Disclosing Party's Confidential Information from unauthorized disclosure by taking at least those steps that Recipient uses to protect its own Confidential Information, but in no event less than reasonable efforts. Recipient will not use the Disclosing Party's Confidential Information except for purposes of fulfilling its obligations under these Terms of Use. Recipient may disclose the Disclosing Party's Confidential Information to its employees, agents, service providers and other persons who need to know such Confidential Information in connection with these Terms of Use. Before doing so, Recipient will take reasonable steps to ensure that such persons will comply with the restrictions imposed on Recipient by these Terms of Use. The obligation to protect Confidential Information will continue as long as Recipient possesses Confidential Information.

6.3 Permitted Disclosure. Recipient may disclose Confidential Information as required by law or in compliance with any court or administrative order; provided that Recipient gives the Disclosing Party reasonable notice as permitted by law that such Confidential Information is being sought by a third party in order to afford the Disclosing Party the opportunity to limit or prevent such disclosure.

SECTION 7. INTELLECTUAL PROPERTY

7.1 SJHS Intellectual Property. The SJHS Intellectual Property (defined below) is the valuable, confidential property of SJHS and its licensors. International intellectual property laws protect such SJHS Intellectual Property. Authorized User may use the Clinical Viewer as permitted herein and may not otherwise modify, adapt, translate, or create derivative or collective works based on the Clinical Viewer without the prior written consent of SJHS. As between the parties, SJHS owns all right, title, and interest in and to the Clinical Viewer and including, without limitation, all current and future enhancements, revisions, new releases and updates thereof and any derivative or collective works based thereon and all documentation thereto, all copyrights, trademarks, trade secrets, patents and goodwill therein, and all images, illustrations, graphics and photographs created by or for SJHS therein (collectively, the “**SJHS Intellectual Property**”).

7.2 Trademarks. Any trademarks owned or controlled by SJHS, whether or not included in the Clinical Viewer and any logos relating to the foregoing are trademarks or service marks of SJHS and its licensors (collectively, the “**SJHS Trademarks**”). All other trademarks, service marks and logos used in the Clinical Viewer, if any, are the trademarks, service marks or logos of their respective owners.

7.3 Use of Intellectual Property. Authorized User may not copy, reproduce, republish, store, upload, post, transmit, analyze, adapt, reformat, print, distribute, commercially exploit or publicly display the SJHS Intellectual Property, the Clinical Viewer, the SJHS Trademarks or the SJHS Confidential Information or any portion thereof in any manner whatsoever without the prior written consent of SJHS. Authorized User may not remove, reproduce, alter, use, display, modify, copy or obscure any copyrighted material, trademark, service mark, legal or other proprietary notices in or on any portions of the SJHS Intellectual Property, the Clinical Viewer, the SJHS Trademarks, or the SJHS Confidential Information or any portion thereof.

SECTION 8. TERMINATION

8.1 Termination. Authorized User’s license to use and access the Clinical Viewer will terminate immediately upon SJHS’ revocation of the Authorized User’s username and password. In addition, Authorized User’s license to use and access the Clinical Viewer shall terminate immediately and without action from SJHS in the event (a) Authorized User materially breaches these Terms of Use; (b) SJHS gives Authorized User notice of additional terms and conditions that will govern use of or access to the Clinical Viewer and the Authorized User does not accept the additional terms and conditions; (c) SJHS ceases providing access to the Clinical Viewer to the entity with which Authorized User is affiliated; and (d) Authorized User does not access the Clinical Viewer for a period of three (3) consecutive months.

5.2 Consequences Upon Termination. Upon the termination or expiration of Authorized User’s license to use and access Clinical Viewer: (a) Authorized User’s use of the Clinical Viewer shall immediately and automatically terminate, (b) Authorized User shall cease use of any SJHS Intellectual Property related to the Clinical Viewer; (c) Authorized User shall immediately return to SJHS any SJHS Intellectual Property, SJHS Confidential Information, documentation and any other SJHS property in Authorized User’s possession; and (d) Authorized User shall certify its compliance with this Section to SJHS in writing upon request.

SECTION 9. GENERAL PROVISIONS

9.1 Assignment. Authorized User may not assign, transfer or sell (voluntarily or by operation of law) its rights or obligations under these Terms of Use, or delegate his or her duty hereunder to any other person without SJHS’ prior written consent. Any purported assignment without SJHS’ consent will be void and will constitute a breach of these Terms of Use. SJHS may assign its rights under these Terms of Use or delegate or subcontract its obligations under these Terms of Use at any time.

9.2 Entire Agreement; Modification. SJHS may, at any time, enhance and/or make changes to these Terms of Use, and will provide Authorized User with notice of such changes, in its sole discretion, via hardcopy, e-mail, or by posting such changes on the Clinical Viewer. Authorized User’s continued use of the Clinical Viewer following the provision of such notice shall constitute Authorized User’s acceptance of the changes.

9.3 Remedies. The parties expressly agree that SJHS shall be entitled to injunctive and other equitable relief to prevent a breach of these Terms of Use, in addition to any other remedy to which SJHS might be entitled. The parties waive the posting of any bond or surety prior to the issuance of an injunction hereunder. In the event a court refuses to honor the waiver of bond hereunder, the parties expressly agree to a bond in the amount of \$100.00. All remedies for such a breach shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any other remedy with respect to the subject matter hereof.

9.4 Governing Law; Venue. These Terms of Use shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of California, without reference to its conflicts or choice of law principles. The parties agree that the sole and exclusive jurisdiction and venue for any and all disputes arising under these Terms of Use shall be in any court located in or having jurisdiction over Orange County, California. Each of the parties hereby irrevocably submits and consents to the personal jurisdiction of such courts.

9.5 Severability. If any term or provision of these Terms of Use shall be held to be invalid, illegal or unenforceable, the remaining terms and provisions shall remain in full force and effect, and such invalid, illegal or unenforceable term or provision shall be deemed not to be part of these Terms of Use.

9.6 Third Parties; Waiver. Nothing in these Terms of Use, express or implied, shall create or confer upon any person or entity that is not the Authorized User any legal or equitable rights, remedies, liabilities or claims with respect to these Terms of Use, except as expressly provided herein. Except as specifically provided in a written waiver signed by a duly authorized representative of the party seeking enforcement, the failure to enforce or the waiver of any provision in these Terms of Use shall not constitute the waiver of such term at any time or in any circumstances and shall not give rise to any restriction on or condition to the prompt, full and strict enforcement of these Terms of Use.

9.7 Headings. The captions and headings of these Terms of Use are included for ease of reference only.

9.8 Action. No action arising under these Terms of Use may be brought by an Authorized User more than one (1) year after the cause of action has accrued.

9.9 Survival. All of the terms and provisions in these Terms of Use which are by their nature intended to survive Authorized User's license to use the Clinical Viewer shall survive any termination or expiration of the license.